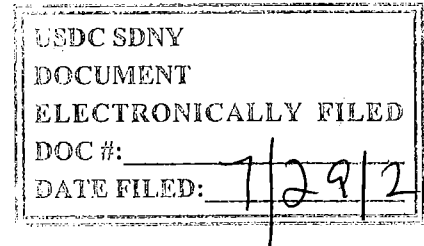


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
FRANCIS HENRY RUGGIERO, :
Plaintiff, :
 :
v. :
 :
COUNTY OF ORANGE; CORRECTIONAL :
OFFICER JOSEPH CAPPELLI (Shield :
number 362), CORRECTIONAL OFFICER :
BRYCE SOTELO (Shield Number 345), :
CORRECTIONAL OFFICER DANIEL :
CAPPELLI (Shield number 522), SGT. :
KATHERINE LYONS (Shield number 107), :
and CORRECTIONAL OFFICER WARREN :
(Shield Number 361), individually and in their :
official capacities as Orange County :
Correctional Officers, :
Defendants. :
-----X

ORDER

20 CV 7693 (VB)

Defendants having filed a partial motion to dismiss the amended complaint pursuant to Rule 12(b)(6) (Doc. #22), it is hereby ORDERED:

1. Defendants' motion is GRANTED IN PART and DENIED IN PART. The motion is GRANTED with respect to the following claims: (i) all claims arising from the incident on August 8, 2019, are dismissed against C.O.s J. Cappelli, D. Cappelli, and Sotelo and Sgt. Lyons, and all claims arising from the incident on August 9, 2019, are dismissed against C.O. Warren; (ii) deliberate indifference to serious medical needs; and (iii) the Monell claims against Orange County. The following claims are also dismissed as abandoned: (i) false arrest, (ii) false imprisonment, (iii) malicious prosecution, (iv) due process, (v) equal protection, (vi) violations under the State Constitution, (vii) respondeat superior, (viii) negligent hiring with respect to C.O. Warren, (ix) gross negligence, (x) intentional infliction of emotion distress, and (xi) negligent infliction of emotional distress. The motion is DENIED with respect to plaintiff's other claims.

2. The following claims shall proceed:

- i. First Cause of Action for Assault and Battery against C.O.s J. Cappelli, D. Cappelli, and Sotelo;
- ii. Second Cause of Action for Aiding and Abetting a Tort against Sgt. Lyons;
- iii. Third Cause of Action for Negligence against C.O.s J. Cappelli, D. Cappelli, Sotelo, and Warren, and Sgt. Lyons;
- iv. Seventh Cause of Action for Negligent Hiring and Retention against Orange County regarding C.O.s J. Cappelli, D. Cappelli, and Sotelo, and Sgt. Lyons;
- v. Eighth Cause of Action for Failure to Intervene in violation of Section 1983 against C.O. Warren and Sgt. Lyons;
- vi. Ninth Cause of Action for Failure to Protect in violation of Section 1983 against C.O.s J. Cappelli, D. Cappelli, Sotelo, and Warren, and Sgt. Lyons;
- vii. Eleventh Cause of Action for violation of Section 1983 against C.O.s J. Cappelli, D. Cappelli, Sotelo, and Warren, and Sgt. Lyons;
- viii. Twelfth Cause of Action for violation of plaintiff's Fourteenth Amendment rights insofar as deliberate indifference claims for parole violators are analyzed under the Fourteenth Amendment, and not the Eighth Amendment;
- ix. Thirteenth Cause of Action for violation of plaintiff's Eighth Amendment rights against C.O.s J. Cappelli, D. Cappelli, Sotelo, and Warren, and Sgt. Lyons;
- x. Fourteenth Cause of Action for Conspiracy in violation of Section 1983 against C.O.s J. Cappelli, D. Cappelli, and Sotelo, and Sgt. Lyons;
- xi. Fifteenth Cause of Action for Use of Unreasonable and Excessive Force in violation of Section 1983 against C.O.s J. Cappelli, D. Cappelli, and Sotelo, and Sgt. Lyons; and
- xii. Sixteenth Cause of Action for Failure to Intercede in violation of Section 1983 against C.O.s J. Cappelli, D. Cappelli, Sotelo, and Warren, and Sgt. Lyons.

3. A telephone conference is scheduled for August 23, 2021, at 12:00 p.m., at which time the Court will issue a bench ruling explaining the basis for its decision. This conference shall also serve as an initial conference in this matter, for which the Court will separately issue a Notice of Initial Conference.

All counsel shall use the following information to connect by telephone:

Dial-In Number: (888) 363-4749 (toll free) or (215) 446-3662

Access Code: 1703567

4. By August 16, 2021, counsel shall file on the ECF docket their proposed Civil Case Discovery Plan and Scheduling Order, the blank form for which will be attached to the Notice of Initial Conference.

5. The Clerk is instructed to terminate the motion. (Doc. #22).

Dated: July 29, 2021
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge